

MICHIGAN DOMESTIC VIOLENCE PREVENTION AND TREATMENT BOARD

MEETING MINUTES March 23, 2007

*** APPROVED June 29, 2007 ***

Members Present:

Candace Cowling
Princella Graham
Mary Beth Kur, Acting Chair
Honorable Edward Sosnick

Staff Present:

Debi Cain, Executive Director
Deb Felder-Smith
Shelia Hankins
Pat Hillmann
Josie Jubb

Gail Krieger
Mary Lovik
Barb Mills
Karen Porter

Guests:

Kathy Hagenian, MCADSV
Emma Peterson, YWCA/Interim House Metro Detroit
Lore Rogers, YWCA of Greater Flint/SAFE House

Welcome and Introductions

Acting Chair M. Beth Kur convened the March 23, 2007 Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) meeting at the DHS, Grand Tower Building in Lansing, MI, at Lansing, MI, at 10:39 a.m. M. Beth Kur indicated that she is subbing for Chair Amy Krause who is ill. Introductions were made and a welcome extended to guests and the newly appointed Board members Candace Cowling and Honorable Edward Sosnick.

BOARD CONSENT

Review of agenda; approval of September 22, 2006 Board meeting minutes.

MOTION: Moved by P. Graham to approve the March 23, 2006 agenda and to approve the September 22, 2006 meeting minutes. Seconded by E. Sosnick. Motion carried.

CHAIR'S REPORT

Acting Chair M. Beth Kur reported that in December A. Krause and N. Perry attended an *Enhancing Judicial Skills in DV Cases Workshop* presented by the U.S. Department of Justice Office on Violence Against Women in partnership with the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund in Santa Fe, New Mexico. A. Krause has been asked to serve as faculty.

MDVPTB is holding a Legislative Reception on April 24, 2007, 5:30-7:00 p.m. at the Karoub building in Lansing. We are in the process of getting Representatives to co-sponsor and Dr. Oliver Williams will be our guest presenter.

MONITORING TO ASSURE ORGANIZATIONAL PERFORMANCE

The Governance Process and Policy Review

Executive Limitations:

Treatment of Staff; Compensation and Benefits; Financial Condition; Assurance of Quality; Contracting Process; Communication and Counsel to the Board

The Board reviewed and approved D. Cain's Treatment of Staff, Compensation and Benefits, Financial Condition, Assurance of Quality, Contracting Process and Communication and Counsel to the Board reports.

MOTION: Moved by P. Graham to accept the Treatment of Staff; Compensation and Benefits; Financial Condition; Assurance of Quality; Contracting Process; Communication and Counsel to the Board. Seconded by C. Cowling. Motion carried.

Governance Process:

Governance Commitment; Chairperson's Role; Committee Principles; Committee Structure

Board-Staff Relationship:

Monitoring Executive Performance

The Board reviewed the policies. No motion required. There was discussion and D. Cain explained the reports and how they relate to the Governance Process. C. Cowling and D. Cain will review some of the language and discuss with the Board at a later date.

EXECUTIVE DIRECTOR'S REPORT – GENERAL OVERVIEW OF WORK TO DATE

Updates from D. Cain in regard to the funding formula. D. Cain asked for Board input on the formulas used for the Domestic Violence Comprehensive and the STOP grants. The formula amounts for the awards has continued to utilize the 1990 census. While this is not an ideal situation, to update census figures will significantly change grant award amounts in some of the most impoverished communities. After discussion, the Board asked that a Study Group be set up to come back to the Board with recommendations next time contracts go out to bid in approximately 3 years.

MOTION: Moved by E. Sosnick to leave the formula as is and not deviate from it and to set up a Study Group to come back to the Board with its recommendations next time contracts go out for bid. Seconded by M. Beth Kur. Motion carried.

D. Cain attending a meeting for STOP Administrators in Washington DC, February 20-21, 2007. There are 57 Administrators and she was selected along with 6 other VAWA State Administrators to meet the new Acting Director Mary Beth Buchanan and the Chief Deputy Director at the Department of Justice, Office on

Violence Against Women (OVW). The group discussed a range of issues surrounding the STOP Formula Grant Program and collaborative efforts to address violence against women.

K. Hagenian commented on the National Coalition Against Domestic Violence, advocate groups, and others lobbying for VAWA appropriations and concerns with national and state grant dollars.

MOTION: Moved by E. Sosnick for the Board to send a letter to the Governor's office stating the Board's concerns regarding the President's recommended changes to state formula grants. Seconded by P. Graham. Motion carried.

S. Hankins gave an update from the "Mobilizing to End Domestic Violence in the African American Community: A Contract for Change" conference, March 19-21, 2007 at Long Beach, CA. She is a Steering Committee member for the Institute on Domestic Violence in the African American Community (IDVAAC). S. Hankins among other national and international key leaders in the domestic violence and civil rights movements, as well as from experts from fields that intersect with intimate partner violence, such as substance abuse, sexual assault, and gangs, were invited to speak at this conference. Through keynote addresses, panel discussions, and workshops, this conference illuminated strategies for mobilizing concerned stakeholders toward developing a contract to confront violence and other challenges facing the African American community. This conference will help to strengthen ties, build bridges, and make personal commitments toward mobilizing communities for change. There were 600 people that attended this conference and there's been a lot of positive feedback. E. Sosnick commented that there needs to be more public awareness. C. Cowling commented on the need to mobilize people. The Steering Committee will next be bringing the Safe Re-Entry Initiative to Detroit later this year.

D. Cain commented on what a remarkable job that S. Hankins does and how fortunate the Board is to have her.

Emma Peterson commented that she attended the conference and was amazed at the data that was available and it was a great event. She will definitely be involved and is proud to be working with Sheila on this initiative.

Legislative Review

D. Cain reported on the pending proposal to develop a Michigan trauma system and sexual assault forensic examination services. C. Hackett-Garagiola and D. Cain met a number of times last year with staff from the Department of Community Health (DCH) and Crime Victim's Services Commission (CVSC) regarding this complex proposal for legislation, which contains two key components: 1. Development of a unified Michigan trauma system for hospitals, and 2. Development of sexual assault forensic exams available at no cost to victims. Both MDVPTB staff and staff from the MI Coalition Against Domestic and Sexual Violence (MCADSV) have conveyed their thinking about how to best ensure that the proposal reflects the needs of sexual assault survivors, and have found DCH and CVSC very receptive. It is the intent of DCH/CVSC to begin vetting a proposal this spring. They are asking that the Board sign on to the following statement:

"The following organizations and agencies have expressed a strong supportive interest in the enhanced crime victim advocacy and health services created by this initiative. They

have all productively contributed to this proposal."

MOTION: Moved by E. Sosnick for the Board's position to support as language to be "The following organizations and agencies have expressed a strong supportive interest in the enhanced crime victim advocacy and health services created by this initiative. They have all productively contributed to this proposal." Seconded by C. Cowling. Motion carried.

M. Lovik reviewed and discussed with the Board HB4466, which would add "any felony involving domestic violence" to the list of crimes that can be predicates to felony murder under MCL 750.316(1)(b). Under this proposed amendment, domestic violence survivors who kill their partners self-defensively under circumstances that do not meet the legal justification of self-defense could be subject to lifetime imprisonment without possibility of parole rather than to lesser penalties imposed for second degree murder or voluntary manslaughter. The Board tabled further action on this bill pending further discussion by the Board Legislative Committee.

D. Cain and M. Lovik reported on SB 80, which would provide property tax relief for recipients of property from charitable nonprofit housing organizations. Under current MCL 211.27a, transfers of ownership of real property occurring after 1994 result in a readjustment of the property's taxable value to its state equalized valuation for the calendar year following the transfer. In many cases, this rule results in an increased property tax liability in the hands of the new property owner. For new low-income homeowners who have taken ownership of property from a charitable nonprofit housing organization (such as Habitat for Humanity), this readjustment can result in increased property taxes that make the home unaffordable to the new owner. Senate Bill 80 seeks to prevent this from happening by exempting from the statute's definition of "transfer of ownership" transfers of nonprofit housing property from a charitable nonprofit housing organization to a low income person. MDVPTB has been collaborating with Habitat for Humanity to provide homes for domestic violence survivors who are leaving transitional supportive housing programs and moving into permanent housing provided by Habitat. Passage of SB 80 would remove a potential impediment to their ability to afford such housing. This bill seeks to remove an impediment to home ownership by low income persons who obtain property from organizations like Habitat for Humanity.

MOTION: Moved by P. Graham for MDVPTB Board to support the concept of SB 80. Seconded by C. Cowling. Motion carried.

D. Cain reviewed a prior GPS tethering pilot program conducted by MDVPTB in 2000-2001. M. Lovik presented a draft Guiding Principle on GPS tethering.

MOTION: Moved by E. Sosnick to approve a General Principle on GPS tethering as follows:

"GPS tethering is one of several methods for monitoring offenders' behavior at times when they are not incarcerated. It not a means of punishment for a crime, and should thus not be imposed on offenders in lieu of jail time. To promote accountability, offenders must reimburse the state or county for the costs of GPS tethering as determined by the court, or perform community service work in lieu of reimbursement in an amount determined by the court.

Lifetime GPS monitoring is currently authorized by statute for parolees convicted of violating MCL 750.520b and 750.520c (criminal sexual conduct in the first and second degrees), and required if the person committing these offenses was age 17 or older and the victim was less than 13 years old.¹ In

¹ See MCL 750.520n, 791.236, and 791.285.

other circumstances, GPS tethering may be imposed as a condition of bond or a term of probation.² GPS tethering can serve the following useful functions:

- Establish enforceable boundaries for offenders
- Alert judges, law enforcement officers, and parole or probation officers that an offender has violated a court or parole order.
- Gather evidence admissible in court for holding offenders accountable for their actions.

Although the current Michigan authorities governing GPS tethering do not mention crime victim notification, this technology can be used to warn crime victims if an offender comes to a location near them, violates curfew, or removes the tethering equipment. The Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) strongly encourages legislators and criminal justice agencies to carefully consider the limitations of GPS tethering as a warning mechanism for victims of domestic violence and stalking crimes. GPS tethering cannot ensure victim safety; for example, equipment failures may occur, and police agencies may not be able to respond quickly enough if an offender is in close proximity to the victim. Moreover, participation in a GPS tethering program imposes burdens on these victims, such as the necessity of carrying a pager or cellular phone at all times. Accordingly:

- Victims of domestic violence and stalking crimes should not be forced to participate in GPS tethering programs against their will.
- Victims who consent to participate in GPS tethering programs must be able to withdraw their consent at any time, for any reason.
- Victims who participate in GPS tethering programs should be fully informed about the functioning, risks, and limitations of this technology.
- Offender boundaries must be determined in consultation with the victim. The victim must be informed that communications in this regard are not privileged, so that the offender and offender's attorney may gain access to this information.
- A representative from pretrial services, the prosecuting attorney's office, police, or a domestic violence service agency must help the victim to develop a safety plan for the victim and the victim's children in case of a violation or equipment failure.
- Victims of domestic violence or stalking should be advised of other services available to them, including PPOs, shelter, counseling, and referrals for assistance with education, housing, child care, employment, and legal services for domestic relations proceedings.

GPS tethering is not effective to change offender behavior once the tether is removed. Therefore, domestic violence offenders on GPS tether during a period of probation must successfully attend a batterer intervention program meeting the State of Michigan standards throughout the period of tethering.

GPS tethering is not appropriate for offenders who are at high risk to commit lethal violence, or who are unlikely to comply with the tethering program conditions. In assessing whether an offender should participate in a tethering program, the court must consider the following:

- Offender lethality. A representative from pretrial services, the prosecuting attorney's office, police, or a domestic violence service agency must meet with the victim to assess lethality of the offender. The victim must be informed that communications for purposes of assessing the

² Authority to impose GPS tethering as a bond condition is found in MCR 6.106(D). MCL 771.3(2)(I) provides that electronic monitoring may be imposed as a probation condition.

appropriateness of court-ordered GPS tethering are not privileged, so that the offender and offender's attorney may gain access to this information.

- The offender's criminal history.
- The nature of the crime with which the offender was charged/for which the offender was sentenced.
- The offender's substance abuse history.
- The offender's mental health history.
- Any current presence or history of suicidal thoughts or homicidal threats by the offender.
- The recommendation from the representative from pretrial services, the prosecuting attorney's office, police, or a domestic violence service agency who met with the victim to assess lethality.
- The victim's desire or request for GPS tethering, or the victim's desire/request that tethering not be ordered.

GPS tethering can be manipulated by perpetrators of domestic violence and stalking, so that this technology can be used as a tool to harass the victim. Domestic violence and stalking consist of repeated, persistent behaviors that typically involve continual testing of boundaries. In order to frighten their victims, tethered perpetrators of these crimes are likely to commit repeated "minor" encroachments into forbidden zones that will trigger a warning to the victim. To prevent this misuse of the technology, the following actions must be taken:

- Supervising agents must promptly investigate all violation notices, document results of the investigation.
- Offenders who violate conditions of bond/probation must be subject to sure, swift, and consistent sanctions, including warrantless arrest and revocation of bond/probation.
- If GPS tethering is ordered as a condition of bond, the bond order shall be issued with protective conditions as provided in MCL 765.6b, and entered into the LEIN system.
- If GPS tethering is ordered as a condition of probation, the conditions of probation shall include conditions reasonably necessary for the protection of 1 or more named persons as provided in MCL 771.3(2)(o), and be entered into the LEIN system.

GPS tethering will not be as effective without the participation of a coordinated community response comprised of judges/court staff, law enforcement officers, probation officers, jail/corrections personnel, domestic violence service providers, prosecutors, and batterer intervention service providers. Thus,

- Each participating agency must designate a coordinator for their local GPS tethering program.
- All representatives from the coordinated community response must be trained on the nature and prevalence of domestic violence, GPS technology and its limitations, victim/perpetrator behaviors, laws regarding proper entry of orders of bond and probation for the protection of named individuals, and laws governing arrest for violation of such orders."

Seconded by P. Graham. Motion carried.

D. Cain reported on new VAWA certifications that must be made in 2007 or 2008.

To qualify for S.T.O.P. funding, 42 USC 379gg-4(e)(1) requires a state to certify that "its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18, United States Code, and any applicable related Federal, State, or local laws." Alternatively, states must certify that they will come into compliance with this

in the future. G. Krieger reported on Michigan's state firearms restrictions for domestic violence misdemeanants; a question facing Michigan is to what extent, if any, a domestic violence misdemeanant who has completed his probation and jail sentence is prohibited from possessing firearms under 18 USC 922(g)(9). In 2000, the U.S. District Court for the Western District of Michigan concluded that Michigan law excludes a domestic violence misdemeanant who has been released from jail or completed probation from federal prosecution for firearms possession under 18 USC 922(g)(9). *United States v. Wegrzyn*, 106 F. Supp. 2d. 959, 960 (W.D. Mich. 2000), aff'd 305 F.3d 593 (CA 6, 2002). In anticipation of an argument that Michigan is not required to provide notice to domestic violence misdemeanants, Ms. Krieger conducted research and concluded that by amending the concealed weapons statute in 2001, the Michigan Legislature created a partial restriction on a domestic violence misdemeanant's right to transport a firearm which results in a complete prohibition on the right to possess firearms under 18 USC 922(g) until such time as he is eligible to carry a concealed weapon. Ms. Krieger's research and conclusions will be published in the PAAM Violence Against Women Newsletter in the near future.

D. Cain reported on the confidentiality provision in 42 USC 13925(b). This provision prohibits grantees and sub-grantees receiving funding under the Violence Against Women Act (VAWA) from disclosing personally identifying information about clients served with these funds unless the client has provided a signed, written release, or disclosure of the information is required by a statute or court order. This provision affects MDVPTB staff review of client files during the quality assurance monitoring process. D. Cain provided to the Board a memo written to all grantees receiving VAWA funding, instructing them that they need to either obtain client permission for quality assurance staff to review files, or redact identifying information for the purpose of file reviews. Additionally, 42 USC 13925(b) raises a question whether staff in VAWA-funded domestic and sexual violence advocacy programs who are not statutorily-mandated reporters of suspected child abuse/neglect under MCL 722.623 are nonetheless still permitted to report voluntarily under MCL 722.624. D. Cain reported that she plans to submit a letter to the director of the Office on Violence Against Women, expressing the view that 42 USC 13925(b) was not intended to prohibit advocacy program staff from reporting suspected child abuse/neglect, so that staff members who are not statutorily-mandated reporters of child abuse/neglect may continue to report on a voluntary basis under MCL 722.624, unless OVW provides direction to the contrary. D. Cain asked for Board feedback on this letter and approach; the Board expressed support.

PUBLIC COMMENT:

Emma Peterson commented this was a wonderful meeting and she enjoyed coming to it.

PROCESS EVALUATION: None.

ADJOURNMENT

The meeting ended at 2:33 p.m.

MOTION: Moved by P. Graham to adjourn the meeting. Seconded by E. Sosnick. Motion carried.

Respectfully submitted,
Josie Jubb